



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1716/2006 and ITA 709/2007

COMMISSIONER OF INCOME TAX Appellant
Through Mrs.P.L. Bansal, Advocate

versus

M/S H.B.ESTATE DEVELOPERS LTD. Respondent
Through Mr.Santosh K.Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

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17.09.2007

In these two appeals, we are concerned with two orders of the Tribunal. The first one is dated 24th February, 2006, passed in ITA No. 3113/Del/2004 relevant for the assessment year 1997-1998, while the second one is dated 29th September, 2006 passed in ITA No. 2944/Del/2004 relevant for the assessment year 1998-1999.

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The Tribunal has set aside the additions made by the Assessing Officer under the head of Administrative and Other Expenses.

Learned counsel for the Assessee has pointed out to us that for these two assessment years as also for the earlier assessment year 1996-1997 (total of three assessment years), the Assessing Officer has taken three different views and there is absolutely no consistency in the stand taken by the Assessing Officer. It is for this reason that we are deciding these appeals together.

It has come on record that the Assessee was carrying on a real estate construction business and it had certain projects which were under construction in the assessment years 1996-1997, 1997-1998 and 1998-1999.

In the assessment year 1996-1997 the Assessee had shown Administrative and Other Expenses to the extent of Rs. 38,18,497/-. Most of these expenses, except to the extent of Rs. 7,50,000/- towards legal and professional expenses, were not accepted. A part of the legal and professional expenses (Rs.3,49,560/-) were amounts paid by way of fees to



the Registrar of Companies for enhancing the share capital of the Assessee

For the assessment year 1997-1998, the Assessee claimed Administrative and Other Expenses to the extent of Rs. 24,72,676/-. This year, the expenses were not at all accepted by the Assessing Officer or by the Commissioner of Income Tax (Appeals). The Tribunal, by an order under appeal, accepted the entire expenses, including expenses towards legal and professional expenses to the extent of Rs.1,29,554/-.

For the assessment year 1998-99, the Assessee claimed Administrative and Other Expenses to the extent of Rs.32,12,367/-. The Assessing Officer accepted the entire expenses except to the extent of Rs.4,49,193/- towards legal and professional expenses.


Apart from the fact that we find that the tax effect in all these years is very little, it has been pointed out to us by learned counsel for the Assessee that his client has suffered a loss in all these years and therefore, in effect there is no loss of revenue.



We also find that the Revenue has been taking inconsistent stand in respect of these three years. However, since the Assessing Officer has allowed all legal and professional expenses other than payment of fees to the Registrar for increasing the share capital in assessment year 1996-1997 (for which there is no dispute), there is no valid reason why it should have taken a completely different stand in the assessment years 1997-1998 and 1998-99. The principle of consistency is fully applicable to the facts of the case.

We are of the opinion that no substantial question of law arises.

The appeal is dismissed.


MADAN B. LOKUR, J


S. MURALIDHAR, J

SEPTEMBER 17, 2007
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